

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on January 23,
2003 at 3:20 P.M., in Room 317-B Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: Sen. John Esp, Vice Chairman (R)
Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 89, 1/16/2003; SB 197,
1/16/2003; SB211, 1/16/2003; SB222,
1/16/2003
Executive Action: None

HEARING ON SB 222

Sponsor: SENATOR JOHN BOHLINGER, SD 7, Billings

Proponents:

Penny Nance, Big Sky Owners Association
Representative John Sinrude
Jon Holtzman, self
Ron Edwards, self
Ted Coffman, Madison County
Jerome Ferschell, self
Robert Donovan, self
Dee Rothschiller, Big Sky Owners Association
William Olson, Big Sky Owners Association
John Fontana, self
Jeff Strickler, self
Richard Fast, self
Gary Carlson, self
Don Loyd, Big Sky Owners Association
Jerry Wortman, self
John Leeper, self
Doug Simpfenderfer, self
William Mellen, self
Kevin Kelleher, self
Jim Johnson, Big Sky Owners Association
Wayne Hill, self
Mona Jamison, Big Sky Owners Association
Betty Bohlinger, self
Senator Gary Perry

Opponents:

Frank Culver, self

Opening Statement by Sponsor:

SENATOR JOHN BOHLINGER, SD 7, Billings said in 1972 that he had purchased a condominium in the Stillwater development of the Mountain Village at Big Sky. He said Chet Huntley had come to his town, with drawings and maps of what this new year-round resort community would look like someday. He saw great potential and made an investment that has paid handsome dividends in terms of good times for him and his family. He said it was interesting to think about how this development had changed since its' inception. He wondered who among those early investors could have envisioned such explosive growth, growth that has contributed

significantly to the economy of the area and to our State, or the problems associated with such growth. Since 1972 the Big Sky Owners Association, with Chet Huntley as its first chair, has been the quasi-governing body for the area. In the beginning all the properties to be developed were within the boundaries of the Big Sky Owners Association. Through the years, new developments have been created that are not within those boundaries. These newer developments have impacted the services of the Big Sky Owners Association, therefore because of the dramatic growth the Owners Association formed a Governance Committee to explore the benefits of developing a local government area. SB 222 was designed to assist resort areas, throughout Montana, like Big Sky and St. Regis, by allowing them to incorporate if they can't meet the existing density requirements of Montana law. Density requirements are 500 permanent residents per square mile, and were established to provide a threshold for the delivery of public services. Section 1 of the bill would allow for these types of towns to call themselves villages, should they wish.

Section 2 eliminates the density requirements for resort type municipalities. That way if you are a resort area, you will no longer have to meet the density requirements under existing law. In order to qualify for the resort exemption you have to meet the requirements of section 3 of the bill which describes Montana resort areas. Section 3 also tells which resort areas are qualified to become a municipality. Present law describes the qualifications necessary to become a resort area. Section 4 states that when resort areas straddle two or more counties, they must follow the incorporation procedures in all counties. Lines 3 through 12, of Section 4, deals with voter eligibility for municipal elections. Montana resorts have an unusually high proportion of tax paying property owners that are not full time residents, about four to 1. As a matter of fairness, we fall back to the old arguments used in dealing with taxation without representation. This section would have given a voice to non-residents whose property taxes will shoulder much of the burden of the new municipality costs. Section 4 would allow such persons to vote in municipal elections only. We have discovered that opposition has arisen to the proposal that would allow non-residents the opportunity to vote in a municipal election. Somehow it was felt by the opposition that if non-residents were allowed to vote, they could influence the outcome of an election, therefore the Board of Directors of the Big Sky Owners Association have offered a compromise amendment.

EXHIBIT (los14a01) The amendment states that once a village is established, resident electors may petition the resident electorate, to see if they would support an initiative to allow non-residents the opportunity to vote in municipal elections. The bottom line is about government and the desire of people to form a governing body: please let the fundamental American

principal that allows for communities to form a government be allowed to happen at Big Sky.

Proponents' Testimony:

Penny Nance, Big Sky Owners Association submitted her testimony. **EXHIBIT(los14a02)**

Representative John Sinrud said these were his constituents. He said there were some people for Big Sky becoming a town and some people against it, but this bill gave them a valuable tool in being able to put it out for the registered voters to decide. He said he had received numerous calls about the non-registered voters being able to vote, so he was in support of the amendments. He weighed the issue about non-residents paying property taxes having a vested interest in a community and he said it was a difficult decision but he believed that those residents who choose to stay in Montana and become residents have a more vested interest in the community. They have decided to make this their true home not just a seasonal home. He urged the committee to pass the bill. He said it would give these citizens more of a voice at the state and county level so their needs and concerns will be heard.

Jon Holtzman, self submitted written testimony. **EXHIBIT(los14a03)**

Ron Edwards, self submitted written testimony. **EXHIBIT(los14a04)**

Ted Coffman, Madison County submitted a letter from Madison County Board of Commissioners. **EXHIBIT(los14a05)**

Jerome Ferschell, said he was in support of the bill and the amendment. He maintained the purpose of forming a municipality was to provide local control and effective enforcement of issues important to the future growth and the financial health of a community. Big Sky is a resort area and has and will continue to be dominated by two major commercial entities, the large land owners and the Big Sky Resort Corporation. He said one must presume that these entities will pursue their financial interests and that could or could not be good for the future health of the community. He said the Big Sky Owners Association Architectural Committee did not have the legal authority or the resources to do the job of planning and controlling community activity. He maintained a plan must be formulated, accepted and implemented that provided a balanced community for residents, industry, retail outlets, schools utilities, the water and sewer and waste disposal requirements, and lastly recreation. Unless this is put in place soon, Big Sky could end up as an undefined sprawl community. The cost of local government control could be the best

investment they could make to ensure the future and well being of this Montana treasure. He asked for the committees support of the bill with the amendment.

Robert Donovan, self said he was there to support the bill. He said he also supported the amendment. He said he was here to represent 238 signers of a petition that supported the bill.

EXHIBIT(los14a06) He maintained they were young working residents of the community. He said they provided the services that made the community so special. He said the petitions were circulated over the past seven days and represented a strong commitment to this legislation. He maintained that anyone who had been involved in the petition process knew what kind of dedication it requires. He asked the committee to support the bill.

{Tape: 1; Side: B}

Dee Rothschiller, Big Sky Owners Association submitted written testimony. **EXHIBIT(los14a07)**

William Olson, Big Sky Owners Association said with the amendment he was in support of the bill. He maintained the Montana Constitution facilitates innovative local government. This bill would allow unique communities like Big Sky to have local control over local issues. It would also allow the local community to deal with the thorny issue of non-resident electors and the issue of having a voice on the local portion of their taxation for services. He claimed this was a good bill that gave Montana Resort areas a democratic voice in the governments of their communities. He asked for support of the bill.

John Fontana, self said he was a strong proponent of the bill and the amendment. He claimed that resort areas were unique and spread out. There are a lot of part time homeowners both residents and non-residents of Montana. There are local business owners and the work force that run the infrastructure. He reiterated what others had said about the Big Sky Owners Association. He liked the bill and believed it made it one vote for one person as long as they were a resident of Montana. He thought that when they looked at planning their future environment, it would reflect a broader segment of the community. He maintained that BSOA were in full support and also their Resort Tax Board that represents the people outside BSOA were in support as well. He thanked the committee for their time.

Jeff Strickler, self said he had been a pediatrician in Helena since 1975. He said they had property in Big Sky for the past 25 years and they qualified as non-resident land owners, and they were in support of the bill. He said they had watched Big Sky

grow and believed it needed a government. He thought it would be good for business and Montana. He urged that the committee support the bill.

Richard Fast, self said he was a resident of the Big Sky Community and a resident of Montana for thirty years. He said because he had been in the Air Force and had traveled around this country and Europe and had a chance to see many communities, he saw the effect of what the people in those communities could do to make it a good livable place. There are a lot of people in Big Sky that have had those same experiences, and they were asking for the opportunity to determine their own future through local government. He said he would appreciate their vote.

Gary Carlson, self said he had owned property in Big Sky for twenty-five years. He believed strongly that the time had arrived for a more structured government in Big Sky and he urged their favorable consideration of SB 222.

Don Loyd, Big Sky Owners Association said he had lived in Big Sky for the past five years. He urged support of the bill, and said this would give them the right to self determination. He limited his remarks in the interest of time and urged the committee's support.

Jerry Wortman, self said he was in support of the bill with the amendment. He asked for the committee's support.

John Leeper, self said he was a native of the state of Montana but had been living away for forty years. He said he was now returning to Big Sky and would be a resident elector in March. He was originally opposed to the bill but with the amendment he supported it. He thought this was good for the state as well as Big Sky.

Doug Simpfenderfer, self said homeowners associations can only do so much in terms of governing a community and that is why he urged the committees vote for SB 222, so Big Sky could have the tools necessary to govern themselves in the future.

William Mellen, self said he was a resident of Gallatin County and that he was part of the problem in the aspect that he had built one house on 23 acres. He believed Big Sky could never meet the density requirements of Montana law. He urged the committee to support the bill. He felt strongly that Big Sky should be something more than a zip code.

Kevin Kelleher, self said he had been a resident in Big Sky since 1976. He said there had been a lot of talk about who should vote

and who shouldn't but he wanted to spell it out very plainly. He had been everything from a ditch digger and fence builder and rock hauler and town drunk to a successful realtor and businessman. He maintained that without the residents and non-residents in Big Sky, neither would be there. He thought they should be treated equally. He was not happy with the amendment. His message was treat these people alike, they work hand and hand together and should all have the opportunity to vote. He said there are some successful districts in his area that everyone votes on, and he urged the committee to treat everyone equally.

Jim Johnson, Big Sky Owners Association said he was a non-resident land owner in Big Sky for nine years. He supported the bill with the amendment. He said he was a member of BSOA. He said he used to be the mayor in Minnesota and had seen up close and personal what could happen with local control, operating under proven democratic processes. He said that could provide a healthy community environment. He said he had seen a lot of mistakes that these resort type areas have made after visiting many of them. He did not believe Big Sky had to make those same mistakes and would not with enlightened self control, proven democratic processes. He asked for their support.

Wayne Hill, self said he was a resident of Big Sky and hoped they would pass this bill. He argued that the residents of Big Sky were very proactive and good at getting things accomplished. He said the water and sewer district was an outstanding example. He urged them to vote in favor of the legislation.

Mona Jamison, Big Sky Owners Association submitted written testimony and a fact sheet. **EXHIBIT(los14a08)**

Betty Bohlinger, self said the Senator and herself did not always agree on bills but they did agree on this one. They had seen Big Sky grow like topsy for thirty years and loved it dearly and it seemed to her that this was a good thing for Big Sky and it's people.

{Tape: 2; Side: A}

Senator Gary Perry said he had the privilege of representing the people in Big Sky and he wanted to be on the record in support of the bill.

Opponents' Testimony:

Frank Culver submitted a statement of opposition.
EXHIBIT(los14a09)

Questions from Committee Members and Responses:

SENATOR BRENT CROMLEY asked the sponsor about the amendment, he saw it addressed the timeshares which was good but he did not see what in the amendment had reduced all the opposition. He presumed that if this bill was past a municipality would be created and there after non-residents would vote. Was he correct.

SENATOR BOHLINGER said that was not the intent of the amendment. The amendment would allow for the establishment of a municipality but those people who could vote were only the residents of the community, not non-residents. He said if you looked on page 5 line 12 where the amendment would insert " a petition signed by at least 100 resident electors of the municipality and approved by a majority of resident electors voting in the election. He said it wasn't giving non-resident property owners a chance to vote in these elections.

SENATOR CROMLEY asked if he meant in the creation.

SENATOR BOHLINGER said in any election, not just in the establishment of the municipality. A non-resident would never be given the opportunity to vote unless the resident property owners agree to let them have a vote.

SENATOR CROMLEY said he owned a condominium with his wife and three children. He wondered how many votes he got.

SENATOR BOHLINGER said one person one vote. One deed one vote.

SENATOR CROMLEY said he did not read it that way and referred the question to Mona Jamison.

Mona Jamison if the resident electors ever choose to let non-resident electors vote, it would be just like any other city, each person on the deed would get a vote. She believed those types of deeds were rare.

SENATOR CROMLEY asked if it would be an incentive to include additional people on the deed to get more votes.

Mona Jamison replied she thought you could do that.

SENATOR LAIBLE assuming that 100 residents elect to have property owners participate in the election how do you deal with condominiums.

Mona Jamison replied that it takes 100 residents to refer the question to the whole village to put it out to a vote. The owner on a deed of a condominium would be allowed to vote.

SENATOR BLACK said apparently the density requirements could not be met by Big Sky he wondered what the current density of Big SKY was.

SENATOR BOHLINGER replied that there had to be 500 people per square mile. He referred the question to Mona.

Mona Jamison replied she did not know the exact number but from the last study that was done it did not meet the 500 resident elector density requirements. Density is based on residency as opposed to how many homes are there.

SENATOR BLACK thought with the tremendous growth rate, he thought they should be able to meet density requirements unless there were some sort of covenants preventing them from meeting those requirements.

Mona Jamison said because these communities don't have planning you can end up with a hodgepodge of development that is very unique. This would give people a voice on how to govern their community and their destiny.

SENATOR JIM ELLIOTT asked if there were two resort areas in the state of Montana.

Mona Jamison replied there were two, Big Sky and St. Regis.

SENATOR ELLIOTT said one of the conditions in the bill is page 2 line 18 contains a destination recreational facility that has more than 100,000 visitors a year and that is situated within a resort area or resort area district... why is that qualification necessary.

Mona Jamison said that section from a realistic stand point could come out because if you have already been a resort area or resort area district you meet the criteria of C1. Some people thought it was another way to measure a resort area.

SENATOR ELLIOTT said with the inclusion of the language it restricts the provisions of this bill to one resort area.

Mona Jamison replied, no, it did not. She said there had been an in-depth discussion about the semicolons, she said that they are intended to stand alone. She said she would love the record to show that it was an implied or for exactly that reason.

SENATOR ELLIOTT wanted to know where in the section of proposed law is a destination recreational facility defined.

Mona Jamison said it was not defined in this bill but there was a case in the Montana Supreme Court that said if a word is defined anywhere in the code, unless a counter definition is shown, that definition applies. The destination recreational facilities, is already defined elsewhere in code and she could get that for the committee.

Closing by Sponsor:

SENATOR BOHLINGER thanked the committee for the thoughtful questions and thanks all those who spoke on SB 222. He said some of the points that were made were worth restating. He restated some of the testimony the proponents had given. The 1972 constitution allows for the formation of self governing municipalities. He maintained that is what they were doing. He reiterated that this was a question about forming a town and the question would be referred to the voters of that community as to whether or not they want to proceed with this invitation. He said when too many cowboys gather we find a need for governance. That is what this bill is about. A need for governance. He found it interesting that Madison County Commission supported the bill. He said he could go on and on but did not want to delay the proceeding any longer and looked forward to the visit in executive session.

HEARING ON SB 89

Sponsor: **SENATOR BILL TASH, SD 17, Dillon**

Proponents:

**Ronda Carpenter, MT County Treasurers Association; Cascade County
Mike Murray, Lewis and Clark County
Alec Hansen, League of Cities and Towns**

Opponents:

None

Opening Statement by Sponsor:

SENATOR BILL TASH, SD 17, Dillon said this was a bill on behalf of MACO. He said the purpose of the bill was to take unclaimed property that is now in the charge of the state and put it back in the county government coffers. He said the bill was well intended, but under present budget criteria it may have to have a

second look. He said there were some people who would further explain it and he reserved the right to close.

Proponents' Testimony:

Ronda Carpenter, MT County Treasurers Association; Cascade County said this was a simple bill. She started with a story about a friend who will only write his checks in \$25 increments. If this gentleman paid his tax bill of \$397.50 with a \$400 check then Cascade County would owe him \$2.50 back. They would right him a check. So when he gets that check he thinks the county could use that money more than him anyway and throws the check in the garbage thinking the money went back to the county. Turns out that every November the county has to bundle up all that money and send it to the state. If it is \$50 or less it goes into an unidentified pot that becomes the general fund. If it is more than \$50 it goes into a list that is published for people to get the refund. She handed out a list that explains what the county had to fill in. **EXHIBIT(los14a10)** She said they were doing a lot of bureaucratic paper work to shuffle this money around that should be kept with the county anyway. She disagreed with the fiscal note because it assumed that the money belonged to the state and it doesn't. It belongs to, first the taxpayer, and then the county general fund. It is not the states tax money to collect. She argued it was a matter of fairness and convenience that this bill pass and allow the money to stay in the counties it belongs in.

Mike Murray, Lewis and Clark County said in asking that this bill introduced and the reason they support this bill, is it his money that was paid to jurors who elected not to collect their fees, or money paid to county vendors, money that they bill residents for. He did not believe the state had a claim on this money.

Alec Hansen, League of Cities and Towns rose in support of the bill and told the committee that the cities had similar problems and hoped they would pass this bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR ELLIOTT asked Alec Hanson if he wanted the cities and towns to be added to this bill.

Alec Hansen said he hoped the term local government would include cities and towns.

SENATOR KELLY GEBHARDT asked if this changed the time lapse for it to become county property.

Ronda Carpenter said she believed it stayed the same.

SENATOR GEBHARDT asked if it allowed local governments the latitude to extend that if they so chose.

Ronda Carpenter said she believed that there was nothing in code saying a treasurer or county commission from deciding to give someone a refund if they came back.

Closing by Sponsor:

SENATOR TASH said thank you. He said it was undoubtedly a bill that rectified a problem that had been occurring for some time. He said they may need time to resolve the budget crises, with that he thanked them for a good hearing.

{Tape: 2; Side: B}

HEARING ON SB 197

Sponsor: **SENATOR GARY PERRY, SD 16, Manhattan**

Proponents:

Mike Murray, Lewis and Clark County

Carl Schweitzer, Bozeman Chamber of Commerce

Don Hargrove, Gallatin County

Opponents:

Steve Kirchhoff, Mayor of Bozeman

Clark Johnson, City of Bozeman

Alec Hansen, League of Cities and Towns

Opening Statement by Sponsor:

SENATOR GARY PERRY, SD 16, Manhattan said he brought this bill forward on behalf of Gallatin County. He maintained that in the codes they provided for county planning boards, city planning boards, and city-county planning boards. Title 76-1 gives

procedures for forming those boards. Title 76-1-201 gives membership and terms for those boards. Title 76-1-111 and 112 provide for consolidated boards by an inter-local agreement. 76-1-211 allows for cities and towns to be represented on the county planning board. 76-1-221 and 223 indicate that when a city council becomes viable enough to appoint a planning board the county will appoint a member. In none of these statutes is there an indication that a city or county can reject a named member. The members represent the entity that appointed them. He presented this bill as a simple clarification to avoid conflict and misunderstanding and to protect the interests of those appointing entities.

Proponents' Testimony:

Mike Murray, Lewis and Clark County said that MACO at their annual meeting went on record in support of this bill and asked that it be drafted. So they rose in support of it today.

Carl Schweitzer, Bozeman Chamber of Commerce said they were in support of the bill and recommended it pass.

Don Hargrove, Gallatin County said he would like to suggest that the legislative process is trivialized by a local community bringing its problems before a group like this for solutions. He said he didn't think that was the case here. He thought this clarified the statute that existed right now and that was the intention of this bill. He said there could be all kinds of planning boards. He said as he read the statute the status quo was the county. He read 76-1-203. He made the point that you start out with land and you have a county, then the constitution allows for self governing municipalities to occur and as they become viable communities and appoint a planning board. There needs to be some structure involved, and the entity that has had that responsibility before has a responsibility to provide a member from that county to the city planning board that has been formed. He said it has not been pointed out anywhere that any of the destination boards have a right to reject a member. He believed it was a right of the organization providing the member to the planning board to have that member there. He maintained it was strictly a clarification and that it was simple and straight forward to avoid further problems.

Opponents' Testimony:

Steve Kirchhoff, Mayor of Bozeman said he was surprised that legislative attention being brought to bear on what he considered a local disagreement. He believed that these issues were important but that they did not require a new state law to

resolve. He explained the incident that lead to the bill. He said it was in court now being decided whether a mayor could decline an appointment. He thought that there were two verbs in this statute that were equally important and had actions implied; one being the power to designate and one the power to appoint. He did not believe one of those verbs was thrown in there superfluously for no reason that a mayor shouldn't have any right to exercise the power to appoint. He reiterated that the matter was before district court where he thought it belonged. There are many forms of local government with a variety of forms of cooperation between the local jurisdictions. Bozeman and Gallatin County have a form of cooperation, and needed to establish just how far the mayors verb to appoint will go. Please allow them to solve this on their own and can live with the consequences either way.

Clark Johnson, City of Bozeman said they had heard testimony today that repeatedly stated a desire for people to control their own destiny. He said several people testified that they supported local control. This legislature had more than a dozen bill drafts aimed at getting city government out of county affairs and historically the Montana legislature has wrestled with this jurisdictional issue. This is the wrong bill to support the concept of local control and ruling within jurisdictional boundaries. MCA 76-1 has inequities that need to be addressed. Those inequities are exaggerated by this bill. 76-1 causes cities to notify counties when they want to have a city planning board. It causes counties to decide if it should be a joint or separate board, then the cities and towns can serve on a county board if all parties agree to the terms including the sharing of duties and costs of that board. Yet the reciprocal does not exist. A city is told to accept another government's appointment to their policy determination. He maintained that this body and the district court are being asked to settle an argument. He would submit that you can settle this dispute for this particular incident and the coming problems that could happen in Big Sky being that it is in two counties simply by striking 76-221 c and all of 76-1-223. In addition you would be consistent in your message that governments should govern in their own jurisdictions.

Alec Hansen, League of Cities and Towns said they should remember that this is a city planning board and the county is entitled to representation. The statue says the county shall designate someone for appointment by the mayor. That remains that the mayor had the power to appoint or not to appoint that person. He said the city and county in Bozeman had agreed to submit this issue to the court for claritory judgement, and he thought it would be a good idea to let them decide this issue. He thought county representation on a city board is intended to encourage cooperation. What kind of cooperation are you getting if you

can't find one person to serve that is acceptable to both the county and the city. He thought this was a perfect example of a problem that should be dealt with locally.

Questions from Committee Members and Responses:

SENATOR LAIBLE asked Mike Murray if it was true that this bill was a result of the case in Bozeman.

Mike Murray said he believed it was, it was introduced at the MACO convention by Gallatin County.

SENATOR LAIBLE asked Mike Murray if he understood that this was the result of a developer being recommended by the county to sit on the city board.

Mike Murray, said he had no reason to doubt the mayor's testimony.

SENATOR LAIBLE said in the existing language it says this representative may be a member of the board of county commissioners or an office holder or an employee of the county. This person was a developer and something else, or what was the situation.

Mike Murray said he did not know. They referred the question to Steve Kirchhoff.

Steve Kirchhoff said the person in question is Mark Evans he is a paid lobbyist or advocate for the Southwest Building Industry Association.

SENATOR LAIBLE said so based on the language, this representative was not a member of the county commissioners or an employee of the county, or an office holder.

Steve Kirchhoff, replied that was correct.

SENATOR CAROLYN SQUIRES said there was a contention between certain towns, she wondered if this wasn't a local level issue that should be sent back for them to deal with.

Don Hargrove said that he was disappointed that people were saying this was just to solve one problem. He maintained it would not solve that problem anyway because it was in court now. He said it did bring up an issue of clarification.

SENATOR SQUIRES said she thought this was an isolated situation to two areas. She wondered if Don Hargrove saw it that way.

Don Hargrove said he really did not see it that way. He said there was the potential, particularly in the faster growing areas of the state, where this would come up. He did not think the receiving entity should be able to reject an appointment.

SENATOR SQUIRES said she would expect her mayor to be responsible to defend her rights as a citizen in the city and she would want her county commissioners to as well. But if this gentleman did not fit why would it not be the mayor's right to veto his appointment.

Don Hargrove thought it was a philosophical question as whether a receiving entity can keep refusing someone until they get someone they like.

SENATOR GEBHARDT asked if the language in line 15 of the bill shouldn't be broadened to a designee of the county commissioners. He thought they should be able to pick anyone who lives within the jurisdiction.

Don Hargrove believed that was saying only that those people were not restricted.

Closing by Sponsor:

SENATOR PERRY addressed **Senator Squire's** concerns. He said it sounded like she was concerned because someone was appointed that might have a contradictory ideology to the mayor. He said if you flipped 180% the controversy would arise again. He said they did not want to go to court over this everytime it happened. He said they wanted to protect both sides of the issue and in his opinion this bill did that. He read the committee two lines from section 76-1-223. "As soon as a city council had enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. In the event of the failure of a county to appoint such a member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county." He said that was the only place in the text where it says the mayor may appoint of his own choosing. He maintained if the legislature had intended the mayor of a city to have veto power over a county appointment then the legislature surely would have dispensed with the county appointing provision and would have provided for a direct mayoral appointment. He said they could clarify the law and prevent future lawsuits. Please pass SB 197.

{Tape: 3; Side: A}

HEARING ON SB 211

Sponsor: SENATOR KEN "KIM" HANSEN, SD 46, Harlem

Proponents:

Jan Sensibaugh, Department of Environmental Quality
Bill Gilbert, MT Automobile Dismantlers and Recyclers

Opponents:

None

Opening Statement by Sponsor:

SENATOR KEN "KIM" HANSEN, SD 46, Harlem said this bill was a housekeeping bill. He said it was brought to him by the department of environmental quality. He said it primarily eliminated junk vehicle disposal fees. He said this law was enacted back in 1973 and the purpose of the fee at that point in time was to stop wrecking facilities from dumping their unwanted junk vehicles on the county. Now that there is scrap metal these companies sell the junk themselves and make a profit. At most there has been 8 vehicles that were submitted in the collection program in one year for a total of \$16 in fees. So the \$2 has only been collected once in the past 15 years. It was identified by the state auditor's office if the statute is not used or needed there is no reason for it to remain of the books. The department concurs with the auditor's finding and requests that the statute be amended to remove the unnecessary language as proposed in this bill. He reserved the right to close.

Proponents' Testimony:

Jan Sensibaugh, Department of Environmental Quality submitted her written testimony. **EXHIBIT**(los14a11)

Bill Gilbert, MT Automobile Dismantler's and Recyclers

Association, said this was a swell bill. It saved a bunch of money.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

SENATOR HANSEN stated this was a prime example of too many laws on the books that are not needed anymore. He urged the committee to pass the bill and provide an immediate effective date.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los14aad)